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PATENT APPLICATION

ATTORNEY DOCKET NO. 200310177-1

IN THE  
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Slew-Hong Yang-Huffman et al.

Confirmation No.: 5395

Application No.: 10/649,303

Examiner: SHINGLES, Kristle D.

Filing Date: August 27, 2003

Group Art Unit: 2141

Title: SYSTEM AND METHOD OF NETWORK FAULT MONITORING

Mail Stop Appeal Brief-Patents  
Commissioner For Patents  
PO Box 1450  
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on February 18, 2008.

☒ The fee for filing this Appeal Brief is \$510.00 (37 CFR 41.20).

☐ No Additional Fee Required.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

☐ 1st Month  
\$120

☐ 2nd Month  
\$460

☐ 3rd Month  
\$1050

☐ 4th Month  
\$1640

☐ The extension fee has already been filed in this application.

☒ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$ 510. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

☒ A duplicate copy of this transmittal letter is enclosed.

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Date of Deposit: March 14, 2008

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Date of facsimile:

Typed Name: Cindy Dioso

Signature: Cindy Dioso

Respectfully submitted,

Slew-Hong Yang-Huffman et al.

By Hope C. Shimabuku

Hope C. Shimabuku

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Reg No.: 57,072

Date: March 14, 2008

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**APPEAL FROM THE APPELLEE TO THE BOARD  
OF PATENT APPEALS AND INTERFERENCES**

Appellant: Siew-Hong Yang-Huffman et al. Confirmation No.: 5395  
Application Serial No.: 10/649,303  
Filed: August 27, 2003  
Title: SYSTEM AND METHOD OF NETWORK FAULT MONITORING  
Group Art Unit: 2141  
Appellee: SHINGLES, Kristie D  
Docket No.: 200310177-1

**MAIL STOP: APPEAL BRIEF PATENTS**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

**APPEAL BRIEF**

Appellant has appealed to the Board of Patent Appeals and Interferences from the decision of the Appellee mailed January 2, 2008, finally rejecting Claims 1-30. Appellant filed a Notice of Appeal on February 18, 2008. Appellant respectfully submits herewith this Appeal Brief with authorization to charge the statutory fee of \$510.00.

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### **REAL PARTY IN INTEREST**

The present application was assigned to Hewlett-Packard Development Company, L.P. as indicated by an assignment from Hewlett-Packard Company recorded on October 8, 2003 in the Assignment Records of the United States Patent and Trademark Office at Reel 014034, Frame 0635. The real party in interest is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

### **RELATED APPEALS AND INTERFERENCES**

There are no known appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

### **STATUS OF CLAIMS**

Claims 1-30 stand rejected pursuant to a final Office Action mailed January 2, 2008. Claims 1-30 are presented for appeal.

### **STATUS OF AMENDMENTS**

An amendment after final was filed on February 21, 2008. The Appellee accepted and will be entering the amendments for consideration on appeal.<sup>1</sup>

### **SUMMARY OF CLAIMED SUBJECT MATTER**

Embodiments of the present invention as defined by independent Claim 1 are directed toward a system (10) for monitoring network condition, comprising a policy server (12) operable to generate collection configuration information based on network topology information and at least one collection policy (14); and at least one collector (22) operable to access the collection configuration information and operable to poll a subset of network nodes (26) requiring monitoring according to the collection configuration information. (at least at page 3, line 29 – page 5, line 3; page 6, line 29 – page 7, line 16; Figures 1 and 2).

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<sup>1</sup> In a telephone conference held between Appellee and Appellant's representative, Hope Shimabuku, on March 11, 2008, Appellee indicated that the Section 101 and 112 rejections would be withdrawn.

Embodiments of the present invention as defined by independent Claim 10 are directed toward a method for monitoring a network, comprising receiving network topology information indicating a list of network nodes (26) to monitor; receiving a definition of a subset of the list of network nodes from which to collect data (14) and a definition of the type of data to collect (16); generating collection configuration information in response to the network topology information, definition of the subset of network nodes (14) and definition of the type of data (16); and collecting data from the subset of network nodes (26) according to the collection configuration information. (at least at page 4, lines 2 – 13; page 5, line 4 – page 7, line 16; Figures 1 and 2).

Embodiments of the present invention as defined by independent Claim 20 are directed toward a system for network fault monitoring, comprising means for receiving network topology information (12, 18); means for receiving a definition of a subset of network nodes from which to collect data (12, 14) and a definition of the type of data to collect (12, 16); means for generating collection configuration information in response to the network topology information, definition of the subset of network nodes and definition of the type of data (12); and means for polling the subset of network nodes to collect data according to the collection configuration information (22). (at least at page 3, line 29 – page 7, line 16; Figures 1 and 2).

Embodiments of the present invention as defined by independent Claim 24 are directed toward a method for network fault monitoring, comprising accessing a collection policy (14) specifying criteria for collecting data from a plurality of network nodes (26); and filtering the plurality of network nodes (26) to determine a subset of the plurality of network nodes (26) for fault monitoring based on the collection policy (14). (at least at page 3, line 29 – page 4, line 13; page 5, line 14 – 19; Figures 1 and 2).

### **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

1. Claims 1-9 and 20-23 were rejected under 35 USC §102(e) as being anticipated by U.S. Patent Publication No. 2004/0008727 issued to See et al. (hereinafter "See").
2. Claims 10, 11 and 15-19 were rejected under 35 USC §102(a) as being anticipated by U.S. Patent No. 7,302,478 issued to Conrad (hereinafter "Conrad").
3. Claims 24-30 were rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 6,343,320 issued to Fairchild et al. (hereinafter "Fairchild").

4. Claims 12-14 were rejected under 35 USC §103(a) as being unpatentable over *Conrad* in view of *Fairchild*.

## ARGUMENT

### A. Standard

#### 1. 35 U.S.C. § 102

Under 35 U.S.C. § 102, a claim is anticipated only if each and every element as set forth in the claim is found in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051 (Fed. Cir. 1987); M.P.E.P. § 2131. In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim." *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); M.P.E.P. § 2131.

#### 2. 37 C.F.R. § 1.104(c)(2)

In rejecting claims for want of novelty or for obviousness, the appellee must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the appellant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified. 37 C.F.R. § 1.104(c)(2).

#### 3. 35 U.S.C. § 103

To establish a *prima facie* case of obviousness under 35 U.S.C. § 103, three basic criteria must be met: First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; second, there must be a reasonable expectation of success; and finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488, (Fed. Cir. 1991); M.P.E.P. § 2143. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on appellant's disclosure. *Id.* Further, the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990); M.P.E.P. § 2143.01. Additionally, not only must there be a suggestion to combine the functional or operational aspects of the

combined references, but also the prior art is required to suggest both the combination of elements and the structure resulting from the combination. *Stiftung v. Renishaw PLC*, 945 F.2d 1173, 1183 (Fed. Cir. 1991). Moreover, where there is no apparent disadvantage present in a particular prior art reference, then generally there can be no motivation to combine the teaching of another reference with the particular prior art reference. *Winner Int'l Royalty Corp. v. Wang*, 202 F.3d 1340, 1349 (Fed. Cir. 2000).

B. Argument

1. Rejection under 35 U.S.C. § 102(e)

a. Claims 1-9

Claims 1-9 were rejected under 35 USC §102(e) as being anticipated by *See*. Appellant respectfully submits that Claim 1 is patentable over *See* and, therefore, Claims 2-9 that depend respectively, therefrom, are also patentable.

Independent Claim 1 recites “a policy server operable to generate collection configuration information based on network topology information and at least one collection policy” and “at least one collector operable to access the collection configuration information and operable to poll a subset of network nodes requiring monitoring according to the collection configuration information” (emphasis added). Appellant respectfully submits that *See* does not disclose or even suggest all the limitations of Claim 1. In the Office Action, the Appellee appears to correspond the network management system (NMS) of *See* with “at least one collector” as recited by Claim 1. (Office Action dated January 2, 2008, pages 2 and 4). Appellant disagrees. For example, *See* appears to describe an NMS connected to a number of managed network devices (MNDs). (*See*, paragraph 0024 and 0026). The MNDs of *See* each appear to include a local resource manager (LRM) configured to monitor changes to local resource properties (LRPs) for specific device. (*See*, paragraph 0032). The LRM of *See* appears to generate a learning event report in response to a change in a LRP and subsequently store the learning event report in a central data store (CDS). (*Id.*). The NMS of *See* appears to obtain change information for each of the devices directly from the learning event report stored in the CDS of *See*. (*See*, paragraph 0026). Thus, *See* appears to indicate that the NMS of *See* does not poll any of the network devices for information and, in fact, appears to teach away from polling completely. (*See*, paragraph 0026). For example, *See* states:

When implemented with an independent storage device, the preferred embodiment relieves the NMS 202 of the burden of polling the plurality of network devices under its management,

while immunizing the NMS 202 from disruptions in the availability of those network devices

(*Id.*) (emphasis added). Therefore, based on at least the cited text, *See* does not appear to disclose or even suggest “at least one collector operable to ...poll a subset of network nodes requiring monitoring according to the collection configuration information” as recited in Claim 1 (emphasis added). In fact, *See* teaches away from polling the network nodes. Thus, *See* does not appear to disclose or even suggest all the limitations of Claim 1. Accordingly, for at least these reasons, Appellant respectfully submits that Claim 1 is patentable over *See*.

Furthermore, in the Office Action, the Appellee appears to contend that the NMS of *See* discloses “at least one collector” recited by Claim 1, because the NMS of *See* “manages only a subset of network devices and therefore only monitors and polls the network devices it is responsible for, which is a subset of all the devices in the network.” (Office Action dated January 2, 2008, page 2). Appellant disagrees. First, as shown above, the NMS of *See* does not poll the network devices, and, in fact, actually teaches away from polling. Furthermore, nowhere in *See* does there appear to be any teaching or even suggestion that only a subset of the network devices of *See* are polled. As shown above, *See* appears to disclose that a MND generates a learning event report in response to the occurrence of a learning event or a change in one of the LRPs. (*See*, paragraph 0032). The learning event of *See* appears to originate from any of the network devices of *See*. Therefore, Appellant respectfully submits that *See* does not appear to disclose or even suggest the polling of “a subset of network nodes,” let alone the polling of “a subset of network nodes requiring monitoring according to the collection configuration information” as recited by Claim 1.

Moreover, even the MND of *See* does not appear to disclose or even suggest “at least one collector” as recited by Claim 1. For example, in the Office Action, the Appellee does not clearly indicate which element of *See* corresponds to the “policy server” recited by Claim 1. (Office Action dated January 2, 2008, page 4). The burden for proving anticipation under 35 U.S.C. 102 is on the Appellee, and it is the Appellee who has to prove that a claim is not patentable. In this case, the Appellee has failed to establish a *prima facie* anticipation rejection for Claim 1 by failing to specifically point out which element of *See* corresponds to at least the “policy server” recited by Claim 1. Therefore, at least for this reason, Appellant respectfully submits that Claim 1 is patentable over *See*.

Nonetheless, assuming that Appellee contends that the MND of See is the “policy server” recited by Claim 1, then Appellant respectfully submits that the MND of See cannot also be the “at least one collector” recited by Claim 1. This appears to be an improper claim construction. Furthermore, the MND of See does not appear to teach or even suggest “a policy server operable to generate collection configuration information based on network topology information and at least one collection policy” as recited by Claim 1 (emphasis added). For example, in the Office Action, the Appellee appears to correspond the LRPs of See with the “collection configuration information” of Claim 1. (Office Action dated January 2, 2008, pages 2 and 4). However, the LRPs of See appear to be information defined by a network administrator. (See, paragraph 0032). Thus, the “collection configuration information” of Claim 1 does not appear to be generated “based on network topology information and at least one collection policy” as recited by Claim 1. Accordingly, for at least these reasons, Appellant respectfully submits that Claim 1 is patentable over See.

Claims 2-9 depends from independent Claim 1 and is also not anticipated by See at least because they incorporate the limitations of independent Claim 1 and also add additional elements that further distinguish See. Therefore, Appellants respectfully that Claims 1-9 are patentable over See.

b. Claims 20-23

Claims 20-23 were rejected under 35 USC §102(e) as being anticipated by See. Appellant respectfully submits that Claim 20 is patentable over See and, therefore, Claims 21-23 that depend respectively, therefrom, are also patentable.

Independent Claim 20 recites “means for generating collection configuration information in response to the network topology information, definition of the subset of network nodes and definition of the type of data” and “means for polling the subset of network nodes to collect data according to the collection configuration information” (emphasis added). Appellant respectfully submits that See does not disclose or even suggest all the limitations of Claim 20. In the Office Action, the Appellee appears to correspond the network management system (NMS) of See with the “means for polling the subset of network nodes” as recited by Claim 20. (Office Action dated January 2, 2008, pages 2 and 4). Appellant disagrees. For example, See appears to describe an NMS connected to a number of managed network devices (MNDs). (See, paragraph 0024 and 0026). The MNDs of See each appear to include a local resource manager (LRM) configured to monitor changes to local resource properties (LRPs) for specific



device. (See, paragraph 0032). The LRM of See appears to generate a learning event report in response to a change in a LRP and subsequently store the learning event report in a central data store (CDS). (*Id.*). The NMS of See appears to obtain change information for each of the devices directly from the learning event report stored in the CDS of See. (See, paragraph 0026). Thus, See appears to indicate that the NMS of See does not poll any of the network devices for information and, in fact, appears to teach away from polling completely. (See, paragraph 0026). For example, See states:

When implemented with an independent storage device, the preferred embodiment relieves the NMS 202 of the burden of polling the plurality of network devices under its management, while immunizing the NMS 202 from disruptions in the availability of those network devices

(*Id.*) (emphasis added). Therefore, based on at least the cited text, See does not appear to disclose or even suggest a “means for polling the subset of network nodes to collect data according to the collection configuration information” as recited in Claim 20 (emphasis added). In fact, See teaches away from polling the network nodes. Thus, See does not appear to disclose or even suggest all the limitations of Claim 20. Accordingly, for at least these reasons, Appellant respectfully submits that Claim 20 is patentable over See.

Furthermore, in the Office Action, the Appellee appears to contend that the NMS of See discloses a “means for polling the subset of network nodes” recited by Claim 20, because the NMS of See “manages only a subset of network devices and therefore only monitors and polls the network devices it is responsible for, which is a subset of all the devices in the network.” (Office Action dated January 2, 2008, page 2). Appellant disagrees. First, as shown above, the NMS of See does not poll the network devices, and, in fact, actually teaches away from polling. Furthermore, nowhere in See does there appear to be any teaching or even suggestion that only a subset of the network devices of See are polled. As shown above, See appears to disclose that a MND generates a learning event report in response to the occurrence of a learning event or a change in one of the LRPs. (See, paragraph 0032). The learning event of See appears to originate from any of the network devices of See. Therefore, Appellant respectfully submits that See does not appear to disclose or even suggest the polling of “a subset of network nodes,” let alone a “means for polling the subset of network nodes to collect data according to the collection configuration information” as recited by Claim 20 (emphasis added). Accordingly, at least for these reasons, Appellant respectfully submits that Claim 1 is patentable over See.

Moreover, *See* does not appear to disclose or even suggest a “means for generating collection configuration information” as recited by Claim 20. For example, in the Office Action, the Appellee appears to correspond the LRPs of *See* with the “collection configuration information” of Claim 20. (Office Action dated January 2, 2008, pages 2 and 4). However, the LRPs of *See* appears to be information defined by a network administrator. (*See*, paragraph 0032). Thus, the “collection configuration information” of Claim 20 does not appear to be generated as recited by Claim 20. Therefore, *See* does not appear to disclose or even suggest a “means for generating collection configuration information in response to the network topology information, definition of the subset of network nodes and definition of the type of data” as recited by Claim 20. Accordingly, for at least these reasons, Appellant respectfully submits that Claim 20 is patentable over *See*.

Claims 21-23 depend from independent Claim 20 and is also not anticipated by *See* at least because they incorporate the limitations of independent Claim 20 and also add additional elements that further distinguish *See*. Therefore, Appellants respectfully that Claims 20-23 are patentable over *See*.

2. Rejection under 35 U.S.C. § 102(a)

a. Claims 10, 11 and 15-19

Claims 10, 11 and 15-19 were rejected under 35 USC §102(a) as being anticipated by *Conrad*. Appellant respectfully submits that Claim 10 is patentable over *Conrad* and, therefore, Claims 11 and 15-19 that depend respectively, therefrom, are also patentable.

Claim 10 recites “receiving a definition of a subset of the list of network nodes from which to collect data and a definition of the type of data to collect,” and “generating collection configuration information in response to the network topology information, definition of the subset of network nodes and definition of the type of data” (emphasis added). Appellant respectfully submits that *Conrad* does not disclose or even suggest all the limitations of Claim 10. For example, *Conrad* appears to disclose a data collection module configured to receive a list of remote devices to be polled/queried at a scheduled time. (*Conrad*, column 5, lines 55-61). The data collection module of *Conrad* appears to collect user-specified information at the scheduled time from the list of remote devices. (*Conrad*, column 6, lines 4-14). The data collection module of *Conrad* appears to collect user-specified information from any remote device on the list. Nowhere in *Conrad* does there appear to be any disclosure or even suggestion of a “subset” of the list of remote devices, let alone the receipt of “a definition of a

subset of the list of network nodes from which to collect data and definition of the type of data to collect” as recited by Claim 10 (emphasis added). Therefore, for at least this reason, Appellant respectfully submits that Claim 10 is patentable over *Conrad*.

Moreover, Appellant respectfully submits that *Conrad* does not disclose or even suggest “generating collection configuration information in response to the network topology information, definition of the subset of network nodes and definition of the type of data” as recited by Claim 10 (emphasis added). For example, in the Office Action, the Appellee fails to clearly specify exactly what element of *Conrad* the Appellee considers to correspond to the “collection configuration information” as recited by Claim 10. (Office Action dated January 2, 2008, page 7). The burden for proving anticipation under 35 U.S.C. 102 is on the Appellee, and it is the Appellee who has to prove that a claim is not patentable. In this case, the Appellee has failed to establish a *prima facie* anticipation rejection for Claim 1 by failing to specifically point out which element of *Conrad* corresponds to at least the “collection configuration information” as recited by Claim 10. Thus, for at least these reasons, Appellant respectfully submits that Claim 10 is patentable over *Conrad*.

Nonetheless, assuming that the Appellee refers to the “user-specified data” in *Conrad* as corresponding to the “collection configuration information” recited by Claim 10, Appellee respectfully submits that the user-specified data of *Conrad* appears to be determined by a user and is not generated “in response to the network topology information, definition of the subset of network nodes and definition of the type of data” as recited by Claim 10. Therefore, Appellant respectfully submits that *Conrad* does not disclose or even suggest all the limitations of Claim 10. Accordingly, for at least these reasons, Claim 10 is patentable over *Conrad*.

Claims 11 and 15-19 depend from independent Claim 10 and is also not anticipated by *Conrad* at least because they incorporate the limitations of independent Claim 10 and also add additional elements that further distinguish *Conrad*. Therefore, Appellants respectfully that Claims 10, 11 and 15-19 are patentable over *Conrad*.

3. Rejection under 35 U.S.C. § 102(b)

a. Claims 24-30

Claims 24-30 were rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 6,343,320 issued to *Fairchild* et al. (hereinafter “*Fairchild*”). Appellant respectfully submits

that Claim 24 is patentable over *Fairchild* and, therefore, Claims 25-30 that depend respectively, therefrom, are also patentable.

Independent Claim 24 recites “accessing a collection policy specifying criteria for collecting data from a plurality of network nodes,” and “filtering the plurality of network nodes to determine a subset of the plurality of network nodes for fault monitoring based on the collection policy” (emphasis added). Appellant respectfully submits that *Fairchild* does not disclose or even suggest all the limitations of Claim 24. For example, *Fairchild* appears to describe a system of grouping network participating devices (NPD) of *Fairchild* in order to reduce the amount of polling conducted by a central management server. (*Fairchild*, column 9, line 62 through column 10, line 12). The grouping of *Fairchild* appears to be based on a logical criterion, such as a range of addresses. (*Id.*). Each NPD of *Fairchild* appears to monitor the status of each NPD within their own particular group, and a master NPD within each group of *Fairchild* appears to report status information to the central management server of *Fairchild*. (*Fairchild*, column 11, lines 30-59). However, the grouping of the NPD devices of *Fairchild* appears to be based on a logical criterion of *Fairchild*, such as a range of addresses. Nowhere in *Fairchild* does there appear to be any disclosure or even suggestion that the groupings of *Fairchild* are for “filtering the plurality of network nodes to determine a subset of the plurality of network nodes for fault monitoring based on the collection policy” as recited by Claim 24 (emphasis added). Therefore, Appellant respectfully submits that *Fairchild* does not disclose or even suggest all the limitations of Claim 24. Accordingly, for at least this reason, Appellant respectfully submits that Claim 24 is patentable over *Fairchild*.

Furthermore, in the Office Action, the Appellee fails to clearly specify exactly what element of *Fairchild* the Appellee considers to correspond to the “collection policy” and the “criteria” as recited by Claim 24. (Office Action dated January 2, 2008, page 8). The burden for proving anticipation under 35 U.S.C. 102 is on the Appellee, and it is the Appellee who has to prove that a claim is not patentable. In this case, the Appellee has failed to establish a *prima facie* anticipation rejection for Claim 24 by failing to specifically point out which element of *Fairchild* corresponds to at least the “collection policy” and the “criteria” as recited by Claim 24. Thus, for at least these reasons, Appellant respectfully submits that Claim 24 is patentable over *Fairchild*.

Nonetheless, assuming that the Appellee references the “communications protocol” and the “logical criterion” of *Fairchild* to correspond respectively to “the collection policy” and the

“criteria” recited by Claim 24, Appellant respectfully submits that *Fairchild* does not disclose or even suggest “accessing a collection policy specifying criteria for collecting data from a plurality of network nodes” as recited by Claim 24. For example, as shown above, the grouping of devices of *Fairchild* appear to use a “peer to peer communications protocol” where the peers (e.g., devices of *Fairchild*) are logically grouped according to logical criterion of *Fairchild*, such as a range of addresses. (*Fairchild*, column 9, line 62 through column 10, line 12). The logical criterion of *Fairchild* appears to identify the *Fairchild* devices which form a particular peer group. Thus, the logical criterion of *Fairchild* does not appear to specify the criteria “for collecting data from a plurality of network nodes” as recited by Claim 24 (emphasis added). Furthermore, the “communications protocol” of *Fairchild* appears to describe the format for which each peer group is to communicate (e.g., automatic state consolidation (ASC)). (*Id.*). Therefore, the communications protocol of *Fairchild* also does not appear to disclose or even suggest “specifying criteria for collecting data from a plurality of network nodes” as recited by Claim 24 (emphasis added). Accordingly, for at least these reasons, Appellant respectfully submits that Claim 24 is patentable over *Fairchild*.

Claims 25-30 depend from independent Claim 24 and are also not anticipated by *Fairchild* at least because they incorporate the limitations of independent Claim 24 and also add additional elements that further distinguish *Fairchild*. Therefore, Appellants respectfully that Claims 24-30 are patentable over *Fairchild*.

4. Rejection under 35 U.S.C. § 103(a)

a. Claims 12-14

Claims 12-14 were rejected under 35 USC §103(a) as being unpatentable over *Conrad* in view of *Fairchild*. Appellant respectfully submit that Claims 12-14 are patentable over *Conrad* in view of *Fairchild* and are therefore allowable.

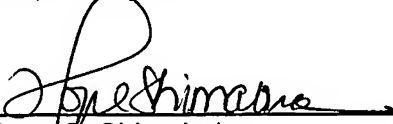
Claims 12-14 depend from independent Claim 10. Appellant repeats and incorporates herein the arguments presented above in connection with independent Claim 10 such that *Conrad* does not disclose or even suggest all the limitations of Claim 10 and, therefore, *Conrad* does not disclose or even suggest all the limitations of Claims 12-14 which depend from Claim 10. Further, the Appellee does not rely on *Fairchild* to remedy, nor does *Fairchild* appear to remedy, at least the deficiencies of *Conrad* indicated above. Therefore, for at least this reasons, Claims 12-14 are patentable over *Conrad* in view of *Fairchild*.

**CONCLUSION**

Appellant has demonstrated that the present invention as claimed is clearly distinguishable over the art cited of record. Therefore, Appellant respectfully requests the Board of Patent Appeals and Interferences to reverse the final rejection of the Appellee and instruct the Appellee to issue a notice of allowance of all claims.

The Commissioner is authorized to charge the statutory fee of \$510.00 to Deposit Account No. 08-2025 of Hewlett-Packard Company. Although no other fee is believed due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 08-2025 of Hewlett-Packard Company.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Hope C. Shimabuku', is written over a horizontal line.

Hope C. Shimabuku  
Registration No. 57,072

Date: March 14, 2008

Correspondence To:

Hewlett-Packard Company  
Grenoble, France  
011-33-476-141798

## **CLAIMS APPENDIX**

1. A system for monitoring network condition, comprising:  
a policy server operable to generate collection configuration information based on network topology information and at least one collection policy; and  
at least one collector operable to access the collection configuration information and operable to poll a subset of network nodes requiring monitoring according to the collection configuration information.
2. The system, as set forth in claim 1, wherein the at least one collection policy defines the subset of network nodes requiring monitoring.
3. The system, as set forth in claim 1, wherein the at least one collection policy defines the Internet Protocol of the subset of network nodes requiring monitoring.
4. The system, as set forth in claim 1, wherein the at least one collection policy defines a device type of the subset of network nodes requiring monitoring.
5. The system, as set forth in claim 1, wherein the policy server is further operable to generate collection configuration information based on at least one collection instruction, the collection instruction defines what data is to be collected from the subset of network nodes requiring monitoring.
6. The system, as set forth in claim 1, wherein the policy server is further operable to generate collection configuration information based on at least one collection instruction, the

collection instruction defines how data is to be collected from the subset of network nodes requiring monitoring.

7. The system, as set forth in claim 1, wherein the policy server is further operable to generate collection configuration information based on at least one collection instruction, the collection instruction defines the frequency to collect data from the subset of network nodes requiring monitoring.

8. The system, as set forth in claim 1, wherein the policy server is further operable to generate collection configuration information based on at least one collection instruction, the collection instruction defines when to collect data from the subset of network nodes requiring monitoring.

9. The system, as set forth in claim 1, wherein the policy server is further operable to generate collection configuration information based on at least one collection instruction, the collection instruction defines how to store data collected from the subset of network nodes requiring monitoring.

10. A method for monitoring a network, comprising:  
receiving network topology information indicating a list of network nodes to monitor;  
receiving a definition of a subset of the list of network nodes from which to collect data and a definition of the type of data to collect;  
generating collection configuration information in response to the network topology information, definition of the subset of network nodes and definition of the type of data; and  
collecting data from the subset of network nodes according to the collection configuration information.



11. The method, as set forth in claim 10, wherein receiving the network topology information comprises receiving identities of the subset of network nodes requiring monitoring.

12. The method, as set forth in claim 10, wherein receiving the network topology information comprises receiving identities of active network nodes existing in the network.

13. The method, as set forth in claim 10, wherein receiving a definition of a subset of network nodes from which to collect data comprises receiving a range of Internet Protocol addresses of the subset of network nodes.

14. The method, as set forth in claim 10, wherein receiving a definition of a subset of network nodes from which to collect data comprises receiving a device type of the subset of network nodes.

15. The method, as set forth in claim 10, wherein receiving a definition of a subset of network nodes from which to collect data comprises receiving a predetermined criteria to define the subset of network nodes.

16. The method, as set forth in claim 10, wherein receiving a definition of the type of data to collect comprises receiving an identification of a data type to collect from the subset of network nodes requiring monitoring.

17. The method, as set forth in claim 10, wherein receiving a definition of the type of data to collect comprises receiving a definition of a timing related to the collection of the data from the subset of network nodes requiring monitoring.

18. The method, as set forth in claim 10, wherein receiving a definition of the type of data to collect comprises receiving a definition of how to store the collected data from the subset of network nodes requiring monitoring.

19. The method, as set forth in claim 10, further comprising providing the generated collection configuration information to at least one collector operable to collect the data from the subset of network nodes requiring monitoring.

20. A system for network fault monitoring, comprising:  
means for receiving network topology information;  
means for receiving a definition of a subset of network nodes from which to collect data and a definition of the type of data to collect;  
means for generating collection configuration information in response to the network topology information, definition of the subset of network nodes and definition of the type of data;  
and  
means for polling the subset of network nodes to collect data according to the collection configuration information.

21. The system, as set forth in claim 20, wherein means for receiving the network topology information comprises means for receiving identities of the subset of network nodes requiring monitoring.

22. The system, as set forth in claim 20, wherein means for receiving a definition of a subset of nodes comprises means for receiving a device type of the subset of network nodes.

23. The system, as set forth in claim 20, wherein means for receiving a definition of the type of data to collect comprises means for receiving an identification of a data type to collect from the subset of network nodes requiring monitoring.

24. A method for network fault monitoring, comprising:  
accessing a collection policy specifying criteria for collecting data from a plurality of network nodes; and  
filtering the plurality of network nodes to determine a subset of the plurality of network nodes for fault monitoring based on the collection policy.

25. The method of Claim 24, further comprising receiving the collection policy indicating the criteria for selecting the subset of network nodes.

26. The method of Claim 24, further comprising receiving the collection policy indicating the criteria for selecting the subset of network nodes, the criteria identifying at least one of internet protocol addresses, device types, database values, and management information base object values of the network nodes.

27. The method of Claim 24, further comprising identifying the subset of network nodes using node status information indicating an operational status of each node in the plurality of network nodes.

28. The method of Claim 24, further comprising filtering the plurality of network nodes using data provided by the collection policy and a network topology source.

29. The method of Claim 24, further comprising forming the subset of network nodes comprising deficiently operating nodes.

30. The method of Claim 24, further comprising providing, to at least one collector, an updated collection policy for identifying the subset of network nodes to target for fault monitoring.

**EVIDENCE APPENDIX**

None

**RELATED PROCEEDINGS APPENDIX**

None